

## **Supreme Court Summaries**

### **Opinions filed May 19, 2016**

#### **People v. Hernandez, 2016 IL 118672**

Direct appeal from the Circuit Court of Du Page County.

JUSTICE KARMEIER delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Kilbride, Burke, and Theis concurred in the judgment and opinion.

Evidence presented at a Du Page County bench trial revealed that, in 1998, this defendant entered the home of an elderly married couple, struck each of them in the head with a metal tool, and took money and valuables. After an initial appeal to the appellate court and a remand for resentencing, he emerged from the circuit court with a sentence for an aggregate of 80 years' imprisonment, consisting of a 40-year term for home invasion and a consecutive 40-year term for armed robbery. What is at issue here is a postconviction petition, which, as amended, he filed in 2014. Hernandez made the claim that his 40-year, extended-term, Class X sentence for armed robbery violated the proportionate penalties clause of the Illinois Constitution because it had the same elements as the lesser Class 2 offense of armed violence with a Category III weapon, which carried a lesser penalty. The trial court granted relief on this claim by ordering a new sentencing hearing, and the State responded with this direct appeal to the Illinois Supreme Court.

In this decision, the supreme court said that the trial court erred in finding a proportionate penalties violation. Hernandez had been indicted for armed robbery "while armed with a dangerous weapon, a bludgeon," and was convicted. He had also been indicted for three counts of armed violence, described as committing an underlying felony other than armed robbery "while armed with a dangerous weapon, a bludgeon," but the State did not pursue those charges. A Category III weapon is statutorily defined as "a bludgeon, black-jack, slugshot, sand-bag, sand club, metal knuckles, billy, or other dangerous weapon of like character." These offense elements are not the same, despite the common use of the term bludgeon, because the definition of dangerous weapon for purposes of armed robbery is derived from common law and is a question of fact, while Category III dangerous weapons for purposes of armed violence are specified by statute and are limited to the weapons identified therein. The tool used as a weapon in this crime did not fit the statutory definition of a bludgeon for an act of armed violence. Neither is the prosecution estopped from arguing that these offenses are not identical. The conclusion reached by the supreme court today is supported by a decision which it rendered earlier in this calendar year.

The circuit court was reversed, and the sentence previously imposed was reinstated.